

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 5**

**2020**

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# The Rights of Women vis-à-vis Succession under Hindu Law

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## ABSTRACT

*The crux of coparcenary is a unity of ownership with the essence of unity of possession. No coparcenary can start without a common male ancestor, but after death may consist of collateral such as brothers, uncles, cousins, nephews. It is only an aspect of the law and cannot be proved by contract. However, an adopted son may be introduced as a member of the coparcenary. As soon as the common ancestor dies, the coparcenary of the brothers can be created. The 2005 Amendment in The Hindu Succession Act, 1956 with respect to Section 6 of the Act changes the whole idea of devolution of interest in coparcenary property by giving Hindus have the same rights as a coparcener as male Hindus. Prior to the 2005 Amendment, the position of Hindu women were very diverse, they were not treated as coparcener and they had no right to seek division.*

## I. INTRODUCTION

The Constitution of India provides that every person is entitled to equality before law and equal protection of the laws and thereby prohibits discrimination on the basis of caste, religious belief and sex. The discrimination on the basis of sex is permissible only as protective measures for the female citizens as there is a need to empower women being discriminated because of their gender for decades. In this Article we will be analyzing the major reforms in Hindu Succession act in respect of status of women as a coparcener. So as to understand the status of women as Coparceners, we need to understand what a coparcener is. In a layman language coparcener is a person who has right of inheritance in an undivided estate and is a Joint Heir. As per Hindu succession Act Coparcener is defined as a person who acquires interest in the joint family property by birth. The main difference between a 'member' and a 'coparcener' of an HUF is that a coparcener can demand for partition of the HUF property, while a member cannot. Prior to the Amendment of 2005, only lineal male descendants were considered as coparceners and daughters merely obtained the status of members on birth and not coparceners. The Amendment of 2005 however has granted equal

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rights upon daughters. Daughters, just as sons, can become coparceners of their father's HUFs on birth, and have attained equal rights as sons in the properties of the HUF.

After marriage, a daughter will not be considered as a member of her parental HUF, but will continue to be a coparcener. Thus, she is empowered to ask for partition of the HUF property, and is also entitled to become the Karta of the HUF, in case she happens to be the eldest coparcener of her father's HUF. When a married daughter who is dead, the shares which would have been inherited by her at the time of partition will be given to her children. In case no child is alive on the day of partition, the grandchildren will be given the shares that the daughter would have received on partition.

In addition, the daughter cannot give up her share of the HUF when she is alive, but is quite capable of transferring her share of the HUF through will. If the will is not drawn up, after her death, her share of the common property will not be transferred to other HUF members, but transferred to her legal heirs.

## **II. HISTORY**

There are two schools in Hindu law one is Mitakshara School and the other one is Dayabhaga School. In Mitakshara School Right to property arises by birth. Under the Mitakshara School all the members of the Joint family enjoy coparcenary rights during the father's lifetime whereas in case of Dayabhaga School the coparcenary rights arise on the death of the father and not when the father is alive. The position of women in the property stands as under the Mitakshara system the wife cannot demand partition. Although she has the right to a share in any partition affected between her husband and her sons. Under the Dayabhaga School of law, women don't have rights because the sons cannot demand partition as the father is the absolute owner. In both the systems, in any partition among the sons, the mother is granted share equal to that of a son. Similarly when a son dies before partition leaving the mother as his heir, the mother is given a share of her deceased son and the share that is entitled to her when there is a partition between the remaining sons. The dayabagha School is applicable only in West Bengal and Mitakshara school is applicable to the whole of India except West Bengal.

Prior to the Hindu law of Inheritance Act 1929, the Mitakshara law recognized inheritance by succession to the separate property which was owned by an individual or male or female. Women were included as heirs to the property by Mitakshara law. Prior to the Hindu Law of Inheritance Act 1929, the Mitakshara school recognized only five female relations as being entitled to inherit namely - widow, daughter, mother paternal grandmother, and paternal

great-grandmother. Hindu Law of Inheritance Act 1929 was the first constructed legislation, which brought women into the scheme of inheritance. This Act, conferred inheritance rights on the following female heir, son's daughter, daughter's daughter and sister. In the year 1937, Hindu women Right to Property Act came which brought changes in the Hindu Law of all schools, and brought changes in the law of coparcenary and in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 legalized the widow to supersede the son and to take a share equal to that of the son. But, the widow did not become a coparcener and was just a member of the joint family.

### **III. THE HINDU SUCCESSION ACT, 1956**

With the arrival of constitutional law, the Hindu Succession Act, 1956 came to be the first law made at central level concerned to inheritance and property of HUF. The Act was dealing with intestate succession among Hindus which came into force on 17th June 1956. It brought important changes in the law of succession and gave rights, which were hitherto unknown, in relation to a woman's property. The section 6 of Hindu Succession Act, 1956 follows as: Devolution of interest in coparcenary property. - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall be transferred by testamentary or intestate succession, and not by survivorship<sup>2</sup>. Section 6 deals with the transfer of the interest of a male Hindu in coparcenary property it states that if a male Hindu dies leaving behind his share in Mitakshara Coparcenary property, such property will pass on to his sons, son's son's son's son's son by survivorship, on surviving members. In case there are female relatives like daughter, widow, mother, daughter of predeceased son, daughter of predeceased daughter, widow of predeceased son, widow of predeceased son of a predeceased son, then the interest of the deceased coparcenary will pass on to his heirs by succession and not by survivorship. And while acknowledging the rule of devolution by survivorship among the members of the coparcenary, makes an exception to the rule in the proviso<sup>3</sup>. As per the provision, if the deceased has left him surviving a female relative specified in Class I of Schedule I, or a male

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<sup>2</sup> <https://www.livemint.com/Money/68iYMEFvkiwfc34vuxnA5H/Intestate-inheritance-may-be-governed-by-succession-laws.html>.

<sup>3</sup> <http://www.legalservicesindia.com/article/1002/Succession-to-the-property-of-a-Hindu-Male.html>.

relative specified in that Class who claims through women, the interest of the deceased in the Mitakshara coparcenary property shall be entrusted by testamentary or intestate succession under this Act and not by survival. The Hindu Succession (Amendment) Act, 2005 seeks to make major amendments in the Hindu Succession Act, 1956, which was to remove the gender discrimination in section 6 of the original Act.

#### **IV. CHANGES INTRODUCED BY AMENDMENT**

- Both sons and daughters have equal rights. They both are coparceners by birth irrespective of gender.
- The daughter of a coparcener has the same rights bestowed on the son of a coparcener.
- Just as rights are equal, so are the responsibilities. The Mitakshara coparcenary's responsibilities as is applicable to the son are also applicable on the daughters.
- Women like daughters, granddaughter, great granddaughter are entitled to pass on their equal shares as coparceners just like the male coparceners.
- The act is applicable to a Hindu who dies whether testamentary or intestate after the commencement of the amendment act especially when his property interest pertains to Joint Hindu family property under the mitakshara law.

#### **V. CONCLUSION**

Section 6 of Hindu succession act states volume on gender equality and inheritance. It also emphasizes the concept of survival and succession of coparcenary property under Mitakshara law. The main aim of this act is to ensure that male heirs and female heirs are entitled to inheritance as coparceners under the law. Equality guaranteed under the Constitution was restored and the provisions conferred equality in the status of sons and daughters in a Hindu law.

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